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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/455,932	12/07/1999	TETSUYA OKANO	1341.1035/JD	5754

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EXAMINER

WINTERS, MAREISHA N

ART UNIT	PAPER NUMBER
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2153

DATE MAILED: 09/24/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/455,932

Applicant(s)

OKANO ET AL.

Examiner

Mareisha N. Winters

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☒ Claim(s) 2 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 December 1999 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3,5,6,7.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Priority

1. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). The certified copy has been filed in parent Application No. 09/455932, filed on December 7, 1999.

Drawings

2. Figure 9 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

3. The disclosure is objected to because of the following informalities:
The reference to "103b" on page 20, line 10 is not disclosed in the drawings.
On page 19, line 19 and throughout the specification "forth" should be --fourth--.
On page 55, line 19 "lath" should be --path--.
Appropriate correction is required.

Claim Objections

4. Claim 2 is objected to because of the following informalities: In line 1, "used" should be --use--. Appropriate correction is required.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

6. Claims 1-3 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,128,657 to Okanoya et al.

In reference to claim 1, Okanoya et al. discloses a relaying apparatus for use in a network system with a plurality of client and server terminals providing service via a network (see column 1, lines 13-17), comprising:

a plurality of route load measuring units (see column 2, lines 54-55, Note that the state management agent means are the route load measuring units.), each of which are provided in the vicinity of the server terminals (see column 2, lines 52-55 and Fig. 1) and each measures the load up to one client terminal (see column 8, lines 26-30, 33-35, and 38-41).;

a selecting unit that selects on server terminal as a destination of the request for service from a client terminal based on the route load measured by the route load measuring units (see column 10, lines 61-65). Note that the distribution processor is the selecting unit.;

In reference to claim 2, Okanoya et al. further discloses a storing unit which stores the route load measured by each of the route load measuring units up to a client terminal (see column 6, lines 18-20).

In further considering claim 2, Okanoya et al. discloses that when a request for service is received from a client terminal, the selecting unit selects a server terminal as a destination of the request for service based on the route load stored in the storing unit (see column 10, lines 61-65).

In reference to claim 3, Okanoya et al. discloses route load measuring units that monitor the operating states of respective server terminals (see column 2, lines 57-60). It is further disclosed that when a request for service is received from a client terminal, the selecting unit selects a server terminal as a destination based on the route load and the operating states monitored by the route load measuring units (see column 10, lines 61-65).

7. Claims 4-6 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent No. 6,327,622 to Jindal et al.

In considering claims 4 and 5, Jindal et al. discloses a relaying apparatus for use in a network system, that is formed with a plurality of client terminals (see Fig. 1) and server terminals divided into several groups (see Fig. 3 and column 9, lines 50-54) providing services to the client terminals via a network, comprising:

a plurality of route load measuring units each provided with respect to each of the groups (see column 9, lines 65-67, column 10, lines 1-8 and Fig. 3). Note that the "IRMO", "IMO" and "status objects" together make up the route load measuring units.

Each of the route load measuring units measures a respective load in the route up to a client terminal having issued a request (see column 8, lines 15-18). ;

a selecting unit, which selects one route load measuring unit as a primary destination of the request for service (see column 10, lines 9-12 and Fig. 3). Note that the “central server” is the selecting unit. Where the selection is based on the route load measured by the route load measuring units (see column 5, lines 10-14), and the route load measuring unit selects one server terminal out of several server terminals as the secondary destination of the request for service (see Fig. 3). Note that in Fig. 3 each “IRMO” points to multiple servers, therefore it is clear that one server terminal will be selected based upon the results in the route load measuring unit.

Jindal et al. further discloses that the route load measuring units monitor the operating states of the respective server terminal (see column 3, lines 5-9), and one route load measuring unit selects a server terminal based on the operating states when selecting a secondary destination of the request for service (see column 2, lines 51-53). Note that the “selected policy” is the operating state of the server terminal.

In referring to claim 6, Jindal et al. discloses a relaying apparatus for use in a network system, that is formed with a plurality of client terminals (see Fig. 1) and server terminals divided into several groups (see Fig. 3 and column 9, lines 50-54) providing services to the client terminals via a network, comprising:

a plurality of route load measuring units each provided with respect to each of the groups (see column 9, lines 65-67, column 10, lines 1-8 and Fig. 3). Note that the “IRMO”, “IMO” and “status objects” together make up the route load measuring units.

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Where each of the route load measuring units monitors the operating states of the respective server terminal (see column 3, lines 5-9). ;

a selecting unit, which selects one route load measuring unit as a primary destination of the request for service (see column 10, lines 9-12 and Fig. 3). Note that the "central server" is the selecting unit. Where the selection is based on the operating states, (see column 2, lines 51-53). Note that the "selected policy" is the operating state of the server terminal. Where the route load measuring unit selects one server terminal out of several server terminals as the secondary destination of the request for service based on the operating state (see Fig. 3). Note that in Fig. 3 each "IRMO" points to multiple servers, therefore it is clear that one server terminal will be selected based upon the results in the route load measuring unit.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Okanoya et al. in view of Jindal et al.

Although the system disclosed by Okanoya et al. shows substantial features of the claimed invention (discussed above), it fails to disclose:

dividing the server terminals into several groups, and selecting one of the server terminals as a secondary destination of the request for service.

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However, Jindal et al. teaches dividing the server terminals into several groups and selecting a secondary destination of the request for service (as discussed above). Therefore, given the teaching of Jindal et al., a person having ordinary skill in the art would have recognized the advantages of modifying Okanoya et al. by dividing the server terminals into groups and selecting a secondary destination so as to provide for priority routing.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

U.S. Patent No. 6,014,700 to Bainbridge et al.

U.S. Patent No. 6,128,644 to Nozaki

U.S. Patent No. 6,324,580 to Jindal et al.

U.S. Patent No. 6,330,602 to Law et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mareisha N. Winters whose telephone number is (703) 305-7838. The examiner can normally be reached on Monday thru Friday, 8a.m. to 5:30p.m..


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton Burgess can be reached on (703) 305-4792. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-7239 for Official communications, (703) 746-7240 for Non-official communications and (703) 746-7238 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-3900.

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mnw

September 19, 2002


GLENON B. BURGESS
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